

Attorney's Docket No. 9400-28

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Charles Atchison

Serial No.: 10/624,320

Filed: July 22, 2003

For: METHODS, SYSTEMS AND COMPUTER PROGRAM PRODUCTS FOR  
QUERYING A DATABASE FOR EMPLOYEE DATA AND ORGANIZING THE  
OBTAINED DATA

Confirmation No.: 7307

Examiner: Charles Edward Lu

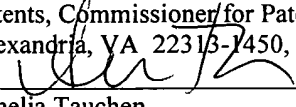
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Amelia Tauchen

**APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. §41.37**

Sir:

This Appeal Brief is filed pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" filed September 14, 2006 and the "Notice of Panel Decision from Pre-Appeal Brief Review" mailed November 3, 2006.

**Real Party In Interest**

The real party in interest is assignee BellSouth Intellectual Property Corporation, Wilmington, Delaware.

**Related Appeals and Interferences**

Appellant is aware of no appeals or interferences that would be affected by the present appeal.

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### **Status of Claims**

Appellant appeals the rejection of Claims 1 – 24, which are currently pending. Appellant submits that the claims involved in the appeal are independent Claims 1, 9, and 17 and the rejected dependent Claims 2 – 8, 10 – 16, and 18 – 24 as a reversal of the rejection of independent Claims 1, 9, and 17 is requested in the present appeal and a reversal of the rejection of dependent Claims 2 – 8, 10 – 16, and 18 – 24 is also requested based on the reversal of the rejection of the independent claims. Accordingly, the pending claims as included in Appellant's response to the Office Action of January 11, 2006 are attached hereto as Appendix A.

### **Status of Amendments**

No amendment has been filed in the present case in response to the Final Office Action mailed June 14, 2006 (hereinafter "Final Action").

### **Summary of Claimed Subject Matter**

Independent Claim 1 is directed to a method of querying an employee database. A plurality of query criteria is defined. (Specification page 8, lines 26 – 27; FIG. 4, block 400). The employee database is queried by applying respective ones of the query criteria to respective ones of the plurality of employees. (Specification page 8, lines 29 – 30; FIG. 4, block 405). A plurality of folders is provided in which respective ones of the plurality of folders correspond to respective ones of the plurality of query criteria. (Specification page 9, lines 14 – 15; FIG. 4, block 410). A plurality of workbooks is created that contains results from querying the employee database for respective ones of the plurality of folders. Respective ones of the plurality of workbooks are associated with respective ones of the plurality of employees that have results for respective ones of the plurality of query criteria corresponding to respective ones of the plurality of folders. (Specification page 9, lines 16 – 17; FIG. 4, block 420).

Independent Claim 9 is directed to a system for querying an employee database that includes means for defining a plurality of query criteria (Specification page 8, lines 26 – 27; FIG. 4, block 400), means for querying the employee database by applying respective ones of the query criteria to respective ones of a plurality of employees (Specification page 8, lines 29 – 30; FIG. 4, block 405), means for providing a plurality of folders, respective ones of the plurality of

folders corresponding to respective ones of the plurality of query criteria (Specification page 9, lines 14 – 15; FIG. 4, block 410), and means for creating a plurality of workbooks containing results from querying the employee database for respective ones of the plurality of folders, respective ones of the plurality of workbooks being associated with respective ones of the plurality of employees that have results for respective ones of the plurality of query criteria corresponding to respective ones of the plurality of folders. (Specification page 9, lines 16 – 17; FIG. 4, block 420). (*See also*, Specification, page 7, line 31 – page 8, line 23). The processor 300 and memory 302, which is configured with the database query engine 308, of FIG. 3 provide structure for all of the means recitations of independent Claim 9.

Independent Claim 17 is directed to a computer program product for querying an employee database, comprising a computer readable storage medium (FIG. 3, memory 302) having computer readable program code embodied therein (FIG. 3, database query engine 308), the computer readable program code comprising computer readable program code configured to define a plurality of query criteria (Specification page 8, lines 26 – 27; FIG. 4, block 400), computer readable program code configured to query the employee database by applying respective ones of the query criteria to respective ones of a plurality of employees (Specification page 8, lines 29 – 30; FIG. 4, block 405), computer readable program code configured to provide a plurality of folders, respective ones of the plurality of folders corresponding to respective ones of the plurality of query criteria (Specification page 9, lines 14 – 15; FIG. 4, block 410), and computer readable program code configured to create a plurality of workbooks containing results from querying the employee database for respective ones of the plurality of folders, respective ones of the plurality of workbooks being associated with respective ones of the plurality of employees that have results for respective ones of the plurality of query criteria corresponding to respective ones of the plurality of folders. (Specification page 9, lines 16 – 17; FIG. 4, block 420). (*See also*, Specification, page 7, line 31 – page 8, line 23).

#### **Grounds of Rejection to be Reviewed on Appeal**

Claims 9 – 16 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter.

Claims 1 – 3, 5, 8 – 11, 13, 16 – 19, 21, and 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over United States Patent Publication No. 2004/0110191 to Handsaker et al. (hereinafter "Handsaker") in view of United States Patent No. 6,359,892 to Szlam (hereinafter "Szlam").

Claims 4, 12, and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Handsaker in view of Szlam, and further in view of U. S. Patent No. 6,366,915 to Rubert et al. (hereinafter "Rubert").

Claims 6 – 7, 14 – 15, and 22 - 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Handsaker in view of Szlam, and further in view of U. S. Patent No. 6,944,614 to Ramasamy et al. (hereinafter "Ramasamy").

### **Argument**

#### **I. Claims 9 - 16 are Directed to Statutory Subject Matter**

Independent Claim 9 stands rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. (Final Action, page 4). The Final Action states "the claimed means are interpreted as software per se, which is functional descriptive material per se and therefore non-statutory." (Final Action, page 4). Appellant respectfully disagrees. The recitations of independent Claim 9 are written in means plus function form. According to Section 2181, part II of the Manual Of Patent Examining Procedure (MPEP), "35 U.S.C. 112 sixth paragraph states that a claim limitation expressed in means-plus-function language 'shall be construed to cover the corresponding structure described in the specification and equivalents thereof.' 'If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112.' *In re Donaldson Co.*, 16 F.3d 1189, 1195, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994) (in banc)." The functionality recited in independent Claim 9 is described, for example, with reference to FIG. 4 at page 8, line 24 through page 10, line 19 of the Specification. Moreover, the Specification explains that the blocks shown in FIG. 4 can be implemented by computer program instructions stored in a computer-readable memory and/or other hardware as follows:

It will be understood that each block of the flowchart and/or block diagram illustrations, and combinations of blocks in the flowchart and/or block diagram illustrations, may be implemented by computer program instructions and/or hardware operations. **These computer program instructions may be provided to a processor of a general purpose computer, a special purpose computer, or other programmable data processing apparatus to produce a machine, such that the instructions, which execute via the processor of the computer or other programmable data processing apparatus, create means and/or circuits for implementing the functions specified in the flowchart and/or block diagram block or blocks.**

These computer program instructions may also be stored in a computer usable or computer-readable memory that may direct a computer or other programmable data processing apparatus to function in a particular manner, such that the instructions stored in the computer usable or computer-readable memory produce an article of manufacture including instructions that implement the function specified in the flowchart and/or block diagram block or blocks. The computer program instructions may also be loaded onto a computer or other programmable data processing apparatus to cause a series of operational steps to be performed on the computer or other programmable apparatus to produce a computer implemented process such that the instructions that execute on the computer or other programmable apparatus provide steps for implementing the functions specified in the flowchart and/or block diagram block or blocks. (Specification, page 8, lines 2 - 23; emphasis added).

Appellant submits that the Specification provides structural support for the means plus function recitations of independent Claim 9 in the form of FIG. 4 and the description reproduced above explaining that the blocks of FIG. 4 may be implemented in hardware, a computer/data processing apparatus that executes computer program instructions, and/or as computer program instructions stored in a computer-readable memory. An example of a computer/data processing apparatus that executes computer program instructions is provided by FIG. 3 in which a memory 302 is configured with a database query engine 308 and a processor 300 executes the instructions comprising the database query engine 308. (Specification, page 6, line 25 – page 7, line 15).

In response to this argument, the Final Action states that Appellant has pointed out "that implementation can be through computer program instructions and/or hardware. Because of the use of the term 'and/or', the claimed system is being broadly and reasonably interpreted as a system of computer program instructions, which is software, per se." Appellant submits,

however, that the Final Action's characterization of Appellant's previous response is misleading. As reproduced above, the Specification states that the computer program instructions can be provided to a processor of a computer or data processing apparatus to produce a machine such that the instructions when executed by the computer or data processing apparatus create means for implementing the functions specified in the flowchart. Appellant submits that a computer or data processing system that is configured to execute computer program instructions clearly qualifies as statutory subject matter under 35 U.S.C. §101.

Appellant respectfully requests that the rejection of Claims 9 - 16 under 35 U.S.C. §101 be reversed based on the failure of the Examiner to establish that Claims 9 - 16 are directed to non-statutory subject matter for at least these reasons.

## II. Introduction to 35 U.S.C. §103 Analysis

A determination under §103 that an invention would have been obvious to someone of ordinary skill in the art is a conclusion of law based on fact. *Panduit Corp. v. Dennison Mfg. Co.* 810 F.2d 1593, 1 U.S.P.Q.2d 1593 (Fed. Cir. 1987), *cert. denied*, 107 S.Ct. 2187. After the involved facts are determined, the decision maker must then make the legal determination of whether the claimed invention as a whole would have been obvious to a person having ordinary skill in the art at the time the invention was unknown, and just before it was made. *Id.* at 1596. The United States Patent and Trademark Office (USPTO) has the initial burden under §103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

To establish a *prima facie* case of obviousness, the prior art reference or references when combined must teach or suggest *all* the recitations of the claims, and there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. M.P.E.P. §2143. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. M.P.E.P. §2143.01, citing *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). As emphasized by the Court of Appeals for the Federal Circuit, to support

combining references, evidence of a suggestion, teaching, or motivation to combine must be **clear and particular**, and this requirement for clear and particular evidence is not met by broad and conclusory statements about the teachings of references. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). In another decision, the Court of Appeals for the Federal Circuit has stated that, to support combining or modifying references, there must be **particular** evidence from the prior art as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

Appellant respectfully submits that the pending claims are patentable over the cited references for at least the reasons that the cited references do not disclose or suggest, among other things, the generation of workbooks that contain the results of a query operation of an employee database and providing folders corresponding to respective ones of the plurality of query criteria. Moreover, the cited references contain no particular evidence that would motivate one skilled in the art to combine their respective teachings. The patentability of the pending claims is discussed in detail hereinafter.

**A. Claims 1, 9, and 17 are Patentable**

Independent Claims 1, 9, and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Handsaker in view of Szlam. (Final Action, page 5). Independent Claim 1 is directed to a method of querying an employee database and recites, in part:

defining a plurality of query criteria;  
**querying the employee database by applying respective ones of the query criteria to respective ones of a plurality of employees;**  
providing a plurality of folders, respective ones of the plurality of folders corresponding to respective ones of the plurality of query criteria; and  
**creating a plurality of workbooks containing results from querying the employee database for respective ones of the plurality of folders,**  
respective ones of the plurality of workbooks being associated with respective ones of the plurality of employees that have results for respective ones of the plurality of query criteria corresponding to respective ones of the plurality of folders.

Independent Claims 9 and 17 include similar recitations. As highlighted above, an employee database is queried and workbooks, which are respectively associated with the employees, are then created to store the results of the query. In sharp contrast, Handsaker describes a system in which workbooks are created by a user, administrator, system and/or automated process. (Handsaker, paragraph 44). Handsaker explains that a system 300 (FIG. 3) is used to generate and process workbooks. (Handsaker, paragraph 71). Appellant cannot find any disclosure in Handsaker that describes the generation of workbooks that contain the results of a query operation of an employee database. The Final Action cites FIG. 5 of Handsaker as showing a query of an employee database (Final Action, page 5). Appellant respectfully disagrees with this interpretation of FIG. 5. As explained in paragraph 115 of Handsaker, FIG. 5 illustrates a view of a virtual workbook 205 using the network browser module 350. Rather than being a query of an employee database, the query shown in FIG. 5 of Handsaker is actually a query of a virtual workbook. The Final Action on page 3 acknowledges that Handsaker teaches querying a virtual workbook, but nevertheless maintains the rejection. Appellant submits that the Final Action fails to recognize the distinction recited in the independent claims that a database query is performed first and *then* workbooks are created that store the results of the database query. Handsaker, by contrast, describes querying workbooks that have previously been created.

In addition, the Final Action acknowledges that Handsaker does not disclose providing a plurality of folders, but cites Szlam as teaching the use of folders for storing information. (Final Action, pages 5 - 6). Appellant submits, however, that even if Handsaker and Szlam were to be combined, their teachings do not disclose or suggest providing folders corresponding to respective ones of the plurality of query criteria as Handsaker merely describes a browser that can be used to query a workbook as discussed above and does not provide any teaching with respect to reserving storage locations for query criteria. Moreover, Appellant submits that there would be no motivation to combine the teachings of Handsaker and Szlam because Handsaker contains no disclosure therein about the desirability of organizing the workbooks in separate locations. As affirmed by the Court of Appeals for the Federal Circuit in *In re Sang-su Lee*, a factual question of motivation is material to patentability, and cannot be resolved on subjective belief and unknown authority. See *In re Sang-su Lee*, 277 F.3d 1338 (Fed. Cir. 2002). It is improper, in determining whether a person of ordinary skill would have been led to this



combination of references, simply to "[use] that which the inventor taught against its teacher." As neither Handsaker nor Szlam contain any clear and particular evidence that would motivate one skilled in the art to combine their teachings, it appears that the Final Action gains its alleged impetus or suggestion to combine the cited references by hindsight reasoning informed by Appellant's disclosure, which, as noted above, is an inappropriate basis for combining references.

For at least the foregoing reasons, Appellant submits that independent Claims 1, 9, and 17 are patentable over the cited references and that dependent Claims 2 – 8, 10 – 16, and 18 – 24 are patentable, at least, by virtue of their depending from an allowable claim. Accordingly, Appellant respectfully requests that the rejection of Claims 1 – 24 be reversed based on the failure of the Examiner to establish a prima facie case of obviousness under 35 U.S.C. §103 for at least these reasons.

**B. Claims 4, 12, and 20 are Patentable**

Dependent Claims 4, 12, and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Handsaker in view of Szlam, and further in view of Rubert. Dependent Claims 4, 12, and 20 each depend from one of the independent Claims 1, 9, and 17, which Appellant submits are patentable for at least the reasons discussed above in Section IIA. Appellant submits that dependent Claims 4, 12, and 20 are patentable over the cited references at least by virtue of their depending an allowable claim. *Ex parte Ligh*, 159 U.S.P.Q. (BNA) 61, 62 (Bd. App. 1967). Accordingly, Appellant respectfully requests that the rejection of Claims 4, 12, and 20 be reversed based on the failure of the Examiner to establish a prima facie case of obviousness under 35 U.S.C. §103 for at least these reasons.

**C. Claims 6 – 7, 14 – 15, and 22 - 23 are Patentable**

Dependent Claims 6 – 7, 14 – 15, and 22 - 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Handsaker in view of Szlam, and further in view of Ramasamy. Dependent Claims 6 – 7, 14 – 15, and 22 - 23 each depend from one of the independent Claims 1, 9, and 17, which Appellant submits are patentable for at least the reasons discussed above in Section IIA. Appellant submits that dependent Claims 6 – 7, 14 – 15, and 22 - 23 are patentable

over the cited references at least by virtue of their depending an allowable claim. *Ex parte Ligh*, 159 U.S.P.Q. (BNA) 61, 62 (Bd. App. 1967). Accordingly, Appellant respectfully requests that the rejection of Claims 6 – 7, 14 – 15, and 22 - 23 be reversed based on the failure of the Examiner to establish a prima facie case of obviousness under 35 U.S.C. §103 for at least these reasons.

### III. Conclusion

In summary, Appellant respectfully submits that, with respect to Claims 1 - 24 the combination of the cited references is improper and, even if combined, the cited references do not teach all of the recitations of the claims. Accordingly, Appellant respectfully requests reversal of the rejection of Claims 1 - 24 based on the cited references. Appellant further submits that Claims 9 - 16 satisfy the requirements of 35 U.S.C. §101 and respectfully requests reversal of the rejection of Claims 9 – 16 on this basis.

Respectfully submitted,



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## APPENDIX A

1. (Previously presented) A method of querying an employee database, comprising:  
defining a plurality of query criteria;  
querying the employee database by applying respective ones of the query criteria to  
respective ones of a plurality of employees;  
providing a plurality of folders, respective ones of the plurality of folders corresponding  
to respective ones of the plurality of query criteria; and  
creating a plurality of workbooks containing results from querying the employee database  
for respective ones of the plurality of folders, respective ones of the plurality of workbooks being  
associated with respective ones of the plurality of employees that have results for respective ones  
of the plurality of query criteria corresponding to respective ones of the plurality of folders.
2. (Original) The method of Claim 1, further comprising:  
associating a first time period with the query criteria; and  
creating respective first worksheets in respective ones of the plurality of workbooks that  
contain the results from querying the employee database for respective ones of the query criteria  
for the first time period.
3. (Original) The method of Claim 2, further comprising:  
associating a second time period with the query criteria; and  
creating respective second worksheets in respective ones of the plurality of workbooks  
that contain the results from querying the employee database for respective ones of the query  
criteria for the second time period.
4. (Original) The method of Claim 1, further comprising:  
automatically performing querying the employee database and creating the plurality of  
workbooks at a scheduled time.
5. (Original) The method of Claim 1, further comprising:

receiving user input selecting one of the plurality of query criteria;  
querying the employee database by applying the selected query criterion to respective ones of the plurality of employees; and  
storing results from querying the employee database by applying the selected query criterion in respective ones of the plurality of workbooks for respective ones of the plurality of employees.

6. (Original) The method of Claim 1, further comprising:  
creating a log file containing a plurality of status indicators for respective ones of the plurality of query criteria.

7. (Original) The method of Claim 6, wherein the plurality of status indicators comprise:  
a query start time;  
a query stop time; and  
a number of employees for which the query is applicable.

8. (Original) The method of Claim 1, wherein the plurality of query criteria comprises a plurality of employee performance criteria.

9. (Previously presented) A system for querying an employee database, comprising:  
means for defining a plurality of query criteria;  
means for querying the employee database by applying respective ones of the query criteria to respective ones of a plurality of employees;  
means for providing a plurality of folders, respective ones of the plurality of folders corresponding to respective ones of the plurality of query criteria; and  
means for creating a plurality of workbooks containing results from querying the employee database for respective ones of the plurality of folders, respective ones of the plurality of workbooks being associated with respective ones of the plurality of employees that have

results for respective ones of the plurality of query criteria corresponding to respective ones of the plurality of folders.

10. (Original) The system of Claim 9, further comprising:  
means for associating a first time period with the query criteria; and  
means for creating respective first worksheets in respective ones of the plurality of workbooks that contain the results from querying the employee database for respective ones of the query criteria for the first time period.

11. (Original) The system of Claim 10, further comprising:  
means for associating a second time period with the query criteria; and  
means for creating respective second worksheets in respective ones of the plurality of workbooks that contain the results from querying the employee database for respective ones of the query criteria for the second time period.

12. (Original) The system of Claim 9, further comprising:  
means for automatically performing querying the employee database and creating the plurality of workbooks at a scheduled time.

13. (Original) The system of Claim 9, further comprising:  
means for receiving user input selecting one of the plurality of query criteria;  
means for querying the employee database by applying the selected query criterion to respective ones of the plurality of employees; and  
means for storing results from querying the employee database by applying the selected query criterion in respective ones of the plurality of workbooks for respective ones of the plurality of employees.

14. (Original) The system of Claim 9, further comprising:  
means for creating a log file containing a plurality of status indicators for respective ones of the plurality of query criteria.

15. (Original) The system of Claim 14, wherein the plurality of status indicators comprise:

- a query start time;
- a query stop time; and
- a number of employees for which the query is applicable.

16. (Original) The system of Claim 9, wherein the plurality of query criteria comprises a plurality of employee performance criteria.

17. (Previously presented) A computer program product for querying an employee database, comprising:

a computer readable storage medium having computer readable program code embodied therein, the computer readable program code comprising:

- computer readable program code configured to define a plurality of query criteria;
- computer readable program code configured to query the employee database by applying respective ones of the query criteria to respective ones of a plurality of employees;
- computer readable program code configured to provide a plurality of folders, respective ones of the plurality of folders corresponding to respective ones of the plurality of query criteria;
- and

computer readable program code configured to create a plurality of workbooks containing results from querying the employee database for respective ones of the plurality of folders, respective ones of the plurality of workbooks being associated with respective ones of the plurality of employees that have results for respective ones of the plurality of query criteria corresponding to respective ones of the plurality of folders.

18. (Original) The computer program product of Claim 17, further comprising:  
computer readable program code configured to associate a first time period with the query criteria; and

computer readable program code configured to create respective first worksheets in respective ones of the plurality of workbooks that contain the results from querying the employee database for respective ones of the query criteria for the first time period.

19. (Original) The computer program product of Claim 18, further comprising:  
computer readable program code configured to associate a second time period with the query criteria; and

computer readable program code configured to create respective second worksheets in respective ones of the plurality of workbooks that contain the results from querying the employee database for respective ones of the query criteria for the second time period.

20. (Original) The computer program product of Claim 17, further comprising:  
computer readable program code configured to automatically perform querying the employee database and creating the plurality of workbooks at a scheduled time.

21. (Original) The computer program product of Claim 17, further comprising:  
computer readable program code configured to receive user input selecting one of the plurality of query criteria;  
computer readable program code configured to query the employee database by applying the selected query criterion to respective ones of the plurality of employees; and  
computer readable program code configured to store results from querying the employee database by applying the selected query criterion in respective ones of the plurality of workbooks for respective ones of the plurality of employees.

22. (Original) The computer program product of Claim 17, further comprising:  
computer readable program code configured to create a log file containing a plurality of status indicators for respective ones of the plurality of query criteria.

23. (Original) The computer program product of Claim 22, wherein the plurality of status indicators comprise:

a query start time;  
a query stop time; and  
a number of employees for which the query is applicable.

24. (Original) The computer program product of Claim 17, wherein the plurality of query criteria comprises a plurality of employee performance criteria.



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**APPENDIX B – EVIDENCE APPENDIX**

None

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**APPENDIX C – RELATED PROCEEDINGS APPENDIX**

None.